

STATE OF INDIANA)	IN THE MARION SUPERIOR COURT NO. 10
) SS:	
COUNTY OF MARION)	CAUSE NO.: 49D10-0403-PL-000672
STATE OF INDIANA,)	
Plaintiff,)	
)	
v.)	
)	
JOE'S AUTO SALES, INC.,)	
Defendant.)	

MOTION FOR PROTECTIVE ORDER

Defendant, Joe's Auto Sales, Inc., by counsel, hereby moves this Court, pursuant to Trial Rule 26(C), for a Protective Order requesting that Plaintiff should not be entitled to copy certain documents, or in the alternative, for an order that the Defendant should not be assessed the costs incurred by the Plaintiff in connection with the copying of such documents. In support thereof, the Defendant states as follows:

1. The Plaintiff has filed an action against the Defendant in which it alleges that the Defendant violated the Indiana Deceptive Consumer Sales Act, IC 24-5-0.5 and IC 9-17 and IC 9-18 in connection with two consumer retail sales transactions.
2. Defendant vigorously denies the allegations set forth in Plaintiff's Amended Complaint.
3. On June 9, 2005, this Court entered an Order directing the Defendant to produce all records and documents containing the information requested by Plaintiff in Interrogatory No. 7 of Plaintiff's first Set of Interrogatories and Request for Production of Documents, a copy of which is attached hereto as Exhibit A.
4. The Defendant has produced copies of the documents described in Interrogatory No. 7, which consist of a voluminous amount of records and documents pertaining to

both retail and wholesale vehicle transactions. Rather than take the time to carefully examine the records being produced by the Defendant to determine which records are relevant and material to this action, the Plaintiff has instead hired a third party vendor, IKON Office Solutions, Inc., to physically go to Defendant's place of business and copy every single document and shred of paper being produced by the Defendant.


5. The amount of material and documentation being produced by Defendant pursuant to this Court's June 9, 2005 Order is extraordinarily extensive and contains a substantial amount of documentation regarding wholesale vehicle transactions which are not pertinent to this action to enforce the Indiana Deceptive Consumer Sales Act, IC 24-5-0.5 and IC 9-17 and IC 9-18 in connection with the two consumer sales transactions. Wholesale transactions are different in substance than the retail transactions at issue in this case assuming *arguendo* that even the other unrelated retail transactions are relevant.
6. The Defendant has been advised that it may take another two to three weeks for the Plaintiff's third party vendor to complete the copying of all of the documents produced by the Plaintiff pursuant to this Court's Order. The costs to be incurred by the Attorney General's office for the copying of these records by a third party vendor will be extraordinary, especially for an action such as this which only involves two retail transactions.
7. Pursuant to IC 24-5-0.5-4, the Plaintiff is requesting that this Court "award the Office of the Attorney General its **reasonable** expenses incurred in the investigation and prosecution of this action (emphasis supplied)."

8. IC 24-5-0.5 only pertains to retail consumer sales transactions and is not applicable in any way to any wholesale transactions that Defendant may have engaged in.
Therefore, the documentation regarding wholesale transactions is not material or relevant in any way to Plaintiff's claim under IC 24-5.05.
9. It would be manifestly unjust, oppressive and unduly burdensome for the Defendant to be required to pay pursuant to IC 24-5-0.5 any of the costs or expenses incurred by the Plaintiff in copying the voluminous amount of documents and records regarding wholesale transactions for the reason that these documents do not involve consumer retail sales transactions.
10. Pursuant to Trial Rule 26(C), the Defendant requests that this Court enter a protective order directing that Plaintiff should not be entitled to continue copying the documents concerning wholesale transactions, or in the alternative, for an order that the Defendant should not be assessed the costs incurred by the Plaintiff in connection with the copying of any such documents.
11. Pursuant to Trial Rule 26(F), Bradley W. Skolnik, attorney for the Defendant, contacted Deputy Attorney General Terry Tolliver, attorney for the Plaintiff, by telephone on Friday, July 22, 2005 in an attempt to resolve this matter. The parties were unable to reach any agreement and the Attorney General's office expressed its intent to continue copying all of the documents pertaining to wholesale transactions and to request that such costs be assessed against the Defendant.

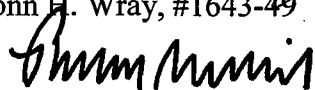
WHEREFORE, the Defendant respectfully requests that this Court enter a protective order directing that Plaintiff should not be entitled to continue copying the documents concerning wholesale transactions, or in the alternative, for an order that the Defendant should

not be assessed the costs incurred by the Plaintiff in connection with the copying of any such documents, and for all other proper relief.

Respectfully submitted,



Donn H. Wray, #1643-49



Bradley W. Skolnik, #1770-49

STEWART & IRWIN, P.C.
251 East Ohio Street, Suite 1100
Indianapolis, IN 46204
Phone: 317-639-5454
Fax: 317-632-1319
Attorneys for Defendant.

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing has been served upon the following counsel of record by U.S. First Class Mail, postage prepaid, this 26 day of July 2005:

Terry Tolliver
Office of the Attorney General
Consumer Protection Division
402 W. Washington Street
IGCS, 5th Floor
Indianapolis, IN 46204



Bradley W. Skolnik

STEWART & IRWIN, P.C.
251 East Ohio Street, Suite 1100
Indianapolis, IN 46204
Phone: 317-639-5454
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Defendant.)	

**PLAINTIFF'S FIRST SET OF INTERROGATORIES AND
REQUEST FOR PRODUCTION OF DOCUMENTS TO DEFENDANT**

The Plaintiff, State of Indiana, by Attorney General Steve Carter and Deputy Attorney General Terry Tolliver, in accordance with Rules 26, 33, and 34 of the Indiana Rules of Trial Procedure, requests that the Defendant, Joe's Auto Sales, Inc., fully answer these interrogatories in writing and under oath, supply the requested documents, and serve a signed verified copy of the answers upon the Indiana Attorney General's Office within thirty (30) days after receipt of said interrogatories and request for production of documents.

Exhibit A

INTERROGATORIES

I. INSTRUCTIONS

A. In answering these interrogatories, you are required to furnish all information that is presently available to you or that can be obtained through reasonable inquiry, including information in the possession of your attorneys, accountants, advisors or other person directly or indirectly employed at, or connected with, you or your attorneys, and anyone else otherwise subject to your control.

B. Answer each interrogatory separately and fully in writing and under oath, unless it is objected to, in which event the reason for each objection must be stated in lieu of the answer.

C. If you cannot answer the following interrogatories in full after exercising due diligence to secure the full information, answer to the extent possible, specifying your inability to answer the remainder, stating whatever information or knowledge you have concerning the unanswered portion and detailing what you did in attempting to secure the unknown information.

D. A question that seeks information contained in or information about or identification of any documents may be answered by providing a copy of such document for inspection and copying, or by furnishing a copy of such document without a request for production.

E. Your reply to each interrogatory should include attachments of as many pages as necessary to fully and completely respond and should be identified by the number corresponding to each interrogatory as set forth below.

F. With respect to each interrogatory and subpart thereof, in addition to providing the information requested, also:

1. Identify each document relied upon or which forms a basis for your answer to these interrogatories;
2. Identify each person who assisted or participated in preparing and/or supplying any of the information given in answer to or relied upon in preparing answers to these interrogatories;
3. State whether the information furnished is within your personal knowledge and, if not, the names, if known, of each person to whom the information is a matter of personal knowledge; and
4. If you maintain that any document or record, which relates to an interrogatory answer has been destroyed, state the content of the document, the location of any copies of said document, the date the document was destroyed and the name of the person who ordered or authorized the destruction.

G. If you claim that an attorney-client privilege or the attorney work-product doctrine is applicable to any document the identification of which is sought by the interrogatories, state and identify as to each document:

1. Date the document was prepared or executed;
2. Drafter or author of document;
3. Each and every person who prepared or assisted in the preparation of the document;

4. Each and every person who received the document;
5. Present location and custodian of document; and
6. Explain the circumstances upon which you base your claim of privilege.

H. Pursuant to Rule 26(E) of the Indiana Rules of Trial Procedure, you are under a continuing duty to supplement your response to interrogatories which request (1) the identity of persons having knowledge of discoverable matters, or (2) the identity of each person expected to be called as an expert witness at trial, the subject matter to which he is expected to testify, and the substance of his testimony. You are also under a continuing duty to supplement responses to interrogatories if you obtain information upon the basis of which: (a) you know your response was incorrect when made; or (b) you know that the response, though correct when made, is no longer true, and the circumstances are such that a failure to amend the response is in substance a knowing concealment.

I. Grammar and syntax as used in these interrogatories shall be construed and interpreted to give proper meaning to its context. By way of illustration, and not by way of limitation, the singular may be construed to include the plural, the plural, the singular, and use of gender or tense may be construed to include all genders and tenses.

II. DEFINITIONS

As used in these Interrogatories and attached Request for Production of Documents, the following terms have the following meanings:

A. "Person" includes any individual, corporations, partnerships, sole proprietorships, unions, trusts, associations, any unincorporated organization or governmental or political subdivision thereof, federations, joint stock companies, or any kind of entity.

B. "Document" means any written, printed, typed, handwritten or otherwise recorded matter of whatever character, in your possession, custody, or control, or known by you to exist or to have existed, including but not limited to letters, purchase orders, memoranda, telegrams, notes, contracts, catalogs, agreements, brochures, diaries, analyses, reports, workpapers, invoices, calendars, inter-office communications, statements, announcements, documents or programs saved on a computer drive or disk, electronic mail, photographs, photographic matter of any nature or otherwise recorded matter of whatever character, and any audio or video recordings. All copies of documents containing any alterations, annotations, or that differ in any other way from the originals or copies referred to in the preceding sentence are deemed separate documents from the originals or copies. If any document requested to be produced was, but is no longer in your possession or control or no longer in existence, state whether it is: (a) missing or lost (b) destroyed; (c) transferred voluntarily or involuntarily to other and, if so, to whom; or (d) otherwise disposed of, stating the circumstances surrounding the authorization for such disposition and state the approximate date thereof.

- C. "Identify", used in reference to an individual person, means to state:
1. the person's full name and present or past known address; and
 2. the person's present or last known business position and business affiliation.

D. "Identify", used in reference to any other business or person, means to state the type of entity, the business' legal name or person's full name, occupation and present or last known address, and last known employment.

- E. "Identify", used in reference to a document, means to state:
1. its date;
 2. the author or addresser;
 3. the addressee;
 4. all recipients of all copies;
 5. its subject matter;
 6. the type of document; and
 7. the name and last known address of the person who presently has custody of it.

- F. "Identify", used in reference to a communication, means to state:
1. its date;
 2. the place where it occurred;
 3. the type of communication;
 4. its substance;
 5. the identity of the person who made it; and

6. the identity of the person who received it or a copy and all other persons present.

7. the name and last known address of the person who presently has custody of it

G. “You” or “your” means Joe’s Auto Sales, Inc., and any and all of its employees, agents, and representatives acting within the scope of their employment.

H. “Motor Vehicle” shall be generally defined as a self-propelled vehicle and within the context of the definition provided by Ind. Code § 9-13-2-105.

I. All other words and phrases not otherwise defined in these Interrogatories and attached Request for Production of Documents shall have their usual and customary meaning. Furthermore, words and phrases that may be considered “terms of art” by members of a particular occupation or profession shall have their usual and customary meaning as used within that particular occupation or profession.

INTERROGATORY 1:

Identify each person who provided information in responding to these Interrogatories.

ANSWER:

INTERROGATORY 2:

Identify all persons having an ownership interest in Joe's Auto Sales, Inc.

ANSWER:

INTERROGATORY 3:

Since August 11, 1993, identify all businesses and entities that you have owned, worked for, or are otherwise currently affiliated with that engage in the sale of motor vehicles.

ANSWER:

INTERROGATORY 4:

State whether you had a valid Indiana motor vehicle dealer license in the years 2002, 2003, or 2004.

ANSWER:

INTERROGATORY 5:

Identify all present and past managers, members, officers, incorporators, directors, employees, agents, and independent contractors of Joe's Auto Sales, Inc., since March 2, 2001, and for each, state the person's title, and the jobs or responsibilities each held or holds.

ANSWER:

INTERROGATORY 6:

Identify any civil action in which either you, or any past or present manager, member, officer, director, trustee, general partner, principal, executive, employee, agent, or representative of Joe's Auto Sales, Inc., have been found liable for your business practices, violating any state or federal law concerning the sale, distribution, financing, or insuring of a motor vehicle, or any other allegation involving unfair, false, misleading, or deceptive practices. For each civil action, state the names of the parties to each action, the court in which each action was filed, the cause or docket number of the lawsuit, the date each action was filed, and the date judgment was entered, if applicable.

ANSWER:

INTERROGATORY 7:

Since March 2, 2001, please state the number of motor vehicles sold by you, or any business or entity identified by you in response to Interrogatory number two (2), and identify the vehicles by the following:

- a. Year, make, and model of the vehicle purchased;
- b. Vehicle identification number of the vehicle purchased;
- c. Date of purchase;
- d. Purchase price;
- e. The name, address, and telephone number of the vehicle buyer;
- f. Whether you had possession of the motor vehicle title on the date of sale;
- g. Whether a certificate of title was delivered to the purchaser on the date of sale;
- h. Whether you provided the purchaser with a 21-day dealer affidavit on the date of sale; and
- i. The date on which you delivered title to the purchaser.

ANSWER:

INTERROGATORY 8:

Since March 2, 2001, please identify all employees of Joe's Auto Sales, Inc., including but not limited to Gary Clark, as well as any and all other managers of Joe's Auto Sales, Inc., by the following:

- a. Name;
- b. Current Address;
- c. Current telephone number;
- d. The employee's duties;
- e. Whether the employee is a duly authorized agent and/or corporate officer of Joe's Auto Sales, Inc.; and
- f. Whether the employee has ever entered into any agreement on behalf of the company, or otherwise signed any documents on behalf of the company.

ANSWER:

INTERROGATORY 9:

Do you contend that Gary Clark was not a manager of Joe's Auto Sales, Inc. If your contention is anything but an unqualified no, please set forth the facts and documents upon which you will rely to support this contention.

ANSWER:

INTERROGATORY 10:

Do you contend that Gary Clark was not duly authorized to sign documents on behalf of Joe's Auto Sales, Inc. If your contention is anything but an unqualified no, please set forth the facts and documents upon which you will rely to support this contention.

ANSWER:

INTERROGATORY 11:

Do you contend that you possessed title for the 1995 Chrysler Sebring LX, VIN 4C3AU42Y2SE243191, on the date that you sold the vehicle to Pamela Stigger. If your contention is anything but an unqualified no, please set forth the facts and documents upon which you will rely to support this contention.

ANSWER:

INTERROGATORY 12:

Set forth the facts and documents upon which you will rely to support your contention that the Assurance of Voluntary Compliance is invalid and void as a matter of law and, therefore, unenforceable for the reason that it was not executed by a duly authorized agent or officer of the Defendant corporation, as alleged in your First Affirmative Defense set forth in your Answer to Plaintiff's Complaint.

ANSWER:

INTERROGATORY 13:

Set forth the facts and documents upon which you will rely to support your contention that the Attorney General's office failed to locate a corporate officer with whom to communicate, and instead sought to bind the unrepresented corporation through an unauthorized signature to the Assurance of Voluntary Compliance, as alleged in your Second Affirmative Defense set forth in your Answer to the Plaintiff's Complaint.

ANSWER:

INTERROGATORY 14:

Set forth the facts and documents upon which you will rely to support your contention that the State of Indiana's claim is without merit for the reason that the Defendant timely tendered the vehicle title to the purchaser who wrongfully refused to accept delivery of the title, as alleged in your Third Affirmative Defense set forth in your Answer to the Plaintiff's Complaint.

ANSWER:

INTERROGATORY 15:

Identify any and all persons whom you may call as witnesses at trial and identify the substance of his or her testimony.

ANSWER:

I affirm, under the penalties for perjury, that the foregoing representations are true.

Dated: _____

JOE'S AUTO SALES, INC.

PRINTED NAME

TITLE

APPROVED: _____
DEFENDANT'S COUNSEL

REQUEST FOR PRODUCTION
INSTRUCTIONS

If your response is that the documents requested are not in your possession or custody, describe in detail the unsuccessful efforts you made to locate the records. If your response is that the requested documents are not in your control, identify who has control and the location of the documents. If a request for production seeks a specific document or an itemized category that is not in your possession, control, or custody, provide any documents you have that contain all or part of the information contained in the requested document or category. The definitions and instructions supplied in the attached Request for Interrogatories shall be used to determine the meaning of a word. Identify the source of each document you produce.

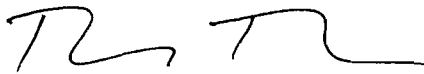
1. Produce a copy of each Indiana motor vehicle dealer license identified by you in your response to Interrogatory number four (4).
2. Produce a copy of each civil judgment identified by you in response to Interrogatory number six (6).
3. Produce a copy of all documentation, including but not limited to rebuilt or salvage disclosures, purchase orders, retail installment contracts, federal truth-in-lending disclosures, odometer disclosure statements, 21-day dealer affidavits, certificates of title, and ST-108's, for each sale identified in answer to Interrogatory number seven (7).

4. Produce a copy of all documents signed by each person identified in your response to Interrogatory number eight (8) on behalf of Joe's Auto Sales, including but not limited to bills of sale, contracts, delivery notices, invoices, motor vehicle titles, and any and all other documents related to the corporation or the sale of motor vehicles.
5. Produce a copy of the General Manager's job description.
6. Produce a copy of all documents referenced in your response to Interrogatory number nine (9).
7. Produce a copy of all documents referenced in your response to Interrogatory number ten (10).
8. Produce a copy of all documents referenced in your response to Interrogatory number eleven (11).
9. Produce a copy of all documents referenced in your response to Interrogatory number twelve (12).
10. Produce a copy of all documents referenced in your response to Interrogatory number thirteen (13).
11. Produce a copy of all documents referenced in your response to Interrogatory number fourteen (14).

Respectfully submitted,

Steve Carter
Indiana Attorney General
Atty. No. 4150-64

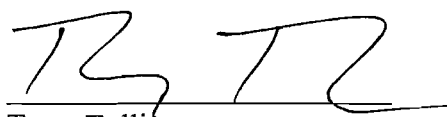
By:


Terry Tolliver
Deputy Attorney General
Atty. No. 22556-49

Office of Attorney General
Indiana Government Center South
302 W. Washington Street, 5th Floor
Indianapolis, IN 46204
Telephone: (317) 233-3300

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the above Interrogatories and Request for Production of Documents was mailed by United States Mail, first class postage prepaid, to Defendant's counsel, Bradley W. Skolnik, Stewart & Irwin, P.C., 251 East Ohio Street, Suite 1100, Indianapolis, Indiana, 46204, on this 8th day of June, 2004.


Terry Tolliver